

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA,
Plaintiff,
v.
DAVID ALLEN VICKERS,
Defendant.

No. 2:12-cr-02036-SAB

**ORDER DENYING
DEFENDANT'S MOTION TO
VACATE, SET ASIDE, OR
REDUCE SENTENCE;
GRANTING MOTION TO
WITHDRAW**

On June 23, 2014, Defendant filed a Motion to Vacate, Set Aside, or Correct Sentence. ECF No. 44. A briefing schedule was set and on October 31, 2014, proceedings were stayed for ninety days or until the Ninth Circuit Court of Appeals issued a decision in *Ezell v. United States*, 14-71696. ECF No. 55. The Court of Appeals issued its decision in *Ezell* on January 23, 2015. This Court ordered parties to file a Status Certificate updating the Court on this matter, ECF No. 57, and Defendant did so on July 14, 2015. ECF No. 60. The Government filed a response concurring with the status certificate on July 22, 2015. ECF No. 61.

Defendant's motion to vacate, set aside or correct sentence was premised on the Supreme Court's decision in *Descamps v. United States*. 133 S. Ct. 2276 (2013). At the time Defendant filed the pending motion, the Ninth Circuit Court of Appeals issued its decision in **ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE, OR REDUCE SENTENCE; GRANTING MOTION TO WITHDRAW** # 1

1 Appeals was considering *Ezell*, which concerned whether *Descamps* applied
2 retroactively. In *Ezell*, the Ninth Circuit ruled that *Descamps* does not apply
3 retroactively. Defendant concedes the *Ezell* ruling, as well as other related case
4 law, forecloses relief in this matter as it renders his motion untimely. The Court
5 concurs. Accordingly, the Court denies Defendant's motion.

6 Defense Counsel moves to withdraw from this matter. Because there are no
7 remaining pending issues, the Court grants counsel's request, and closes this file.

8 Accordingly, **IT IS HEREBY ORDERED:**

- 9 1. Defendant's Motion to Vacate, Set Aside, or Correct Sentence, ECF No.
10 44, is **DENIED**.
- 11 2. Defense Counsel's Motion to Withdraw, included in ECF No. 60, is
12 **GRANTED**.

13 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
14 file this Order, provide copies to counsel and **close the file**.

15 **DATED** this 3rd day of September 2015.



A handwritten signature in blue ink, appearing to read "Stanley A. Bastian".

20 Stanley A. Bastian
21 United States District Judge
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**ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE,
OR REDUCE SENTENCE; GRANTING MOTION TO WITHDRAW # 2**